IN THE HIGH COURT OF DELHI

CRL.M.M. No. 2797/2004

J.C.Khandelwal ..... Petitioner
! through: Mr.Vijay Aggarwal, Advocate

VERSUS

$ State & Anr. ..... Respondents
^ through: Mr.Tarun Goomber, Adv.

% DATE OF DECISION: *12*.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Petitioner seek quashing of the Complaint No.421/1 dated 8.1.2004 as also the summoning order dated 7.8.2002.

2. I may note that the complaint was filed in the year 2000 but a new number has been assigned probably when the complaint was transferred from one Court to another.

3. Complaint has been filed under Section 138 of the Negotiable Instruments Act. Petitioners have been summoned to face trial.

4. In the complaint only one person has been stated as the accused viz. the company.

5. In the memo of parties, accused has been described as under:-

> “Euro Cotspin Limited,
> Through its Chairman & Managing Director
> Directors, Secretary and Principal Officers
> Ambala-Chandigarh Highway,
> Village : Lalru Tehsil : Derabassi
> District : Patiala (Punjab).
>
> Also at :
>
> SCO 208-209
> Sector 34-A,
> Chandigarh-160017 .....
> Respondent/Accused”

6. There is no mention in the complaint recording involvement of petitioner No.1. Against petitioner No.2 only averment to be found is in para 6 which reads as under:-

> “6. That in pursuance of acceptance of the Fixed Deposits the officers of the accused company through Shri Rajeev Khandelwal, Director issued post dated cheques to my client in discharge of interest liability which accrued on the amount of Fixed Deposit from time to time and the interest was to be paid monthly as per the agreed terms. The original Bounced Cheques annexed Annexure-C”

7. Summoning order reads as under:-

> “Arguments on pre-summoning evidence heard. Perused the documents i.e. cheques, return memo and demand notice, legal notice and complaint filed within period of limitation. Perusal of the above documents shows that there are sufficient grounds to proceed against the accused under Section 138 of the N.I. Act. Let accused be summoned for 8/11/2000. PF/RC be filed within 15 days.”

8. In the pre-summoning evidence being evidence by way of affidavit filed by Sanjiv Malhotra on behalf of the complainant no reference whatsoever has been made to the first petitioner.

Reference has been made to second petitioner in the context of issuing certain cheques.

9. There are no averments in the complaint to the effect that the petitioners were in charge and were responsible for the conduct of the business and affairs of the company when the offence was committed. Even in the pre-summoning evidence no evidence to said effect has been led.

10. In the latest decision on the point by the Supreme Court reported as JT 2007 (9) SC 449 *K.Srikanth Singh vs. North East Securities Ltd. & Anr*., it was held as under:-

> "4. The allegation in the complaint is that the present petitioner is one of the directors of A.1 company. Simply because he is a director, he cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act, 1881 unless his case falls under the provisions of Section 141 of the Act. Under Section 141 of the Act, it must be shown that every person, who at the time of the offence, is responsible to the company for conduct of its business and day-to-day affairs. It is alleged that all the accused persons after negotiations with the complainant firm agreed to take financial assistance from the complainant and after executing comprehensive loan documentation, they have taken financial assistance to a tune of Rs.10.00 lakhs from the complainant firm. Since it is alleged that all the Directors-accused participated in the negotiations with regard to the financial help to be taken by the A.1 company from the complainant firm, it can be inferred that all the directors were responsible for day-to-day transactions of A.1 company. Therefore, the allegations in the complaint make out a prima facie case that all the directors are in-charge of, and responsible for, day-to-day affairs of the company."

11. In view of the decision of the Supreme Court in

K.Srikanth Singh's case (supra), petition has to be allowed.

12. Petition stands disposed of quashing the summoning order dated 27.8.2002 where under petitioners have been summoned.

13. The complaint against the petitioners is quashed.

14. No costs.

September 12, 2007 **PRADEEP NANDRAJOG, J.**
dk